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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

DAVID S. CLARK,)
Petitioner,) Civil Case No. 04-849-ST
vs.) ORDER
ROBERT SCHIEDLER, Superintendent,)
Two Rivers Correctional Institution,)
Respondent.)

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KING, Judge:

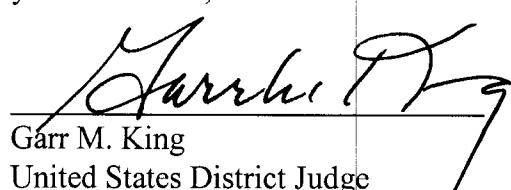
The Honorable Janice M. Stewart, United States Magistrate Judge, filed Findings and Recommendation on September 12, 2006. The matter is before this court. See 28 U.S.C. § 636(b)(1)(B) and Fed. R. Civ. P. 72(b). Petitioner has filed objections to the Findings and Recommendation and the Respondent has filed a response.

When either party objects to any portion of the Magistrate's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate's report. See 28 U.S.C. § 636(b)(1)(C); McDonnell Douglas Corp. v. Commodore Business Machines, Inc., 656 F.2d 1309, 1313 (9th Cir. 1981), cert. denied, 455 U.S. 920 (1982).

Having given a *de novo* review of the issues raised in plaintiff's objections to the Findings and Recommendation, I find no error. The magistrate properly applied a deferential standard of review to the state trial court's findings. Although the state court appeared to conflate the standard articulated in Strickland v. Washington, 466 U.S. 668 (1984), in its Memorandum of Opinion it is clear that the state court based its decision on the fact that petitioner failed to prove that his counsel was deficient in the first place. In addition, the magistrate properly rejected Claims Two, Five and Six because the petitioner failed to adequately exhaust the claims.

Accordingly, I ADOPT Magistrate Judge Stewart's Findings and Recommendation (#42). IT IS HEREBY ORDERED that the Petition for Writ of Habeas Corpus (#2) is DENIED and the case DISMISSED with prejudice.

Dated this 6/5 day of November, 2006.


Garr M. King
United States District Judge